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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUNO RICHARD and DENIS FLAVEN

Appeal 2008-0565[1]
Application 09/883,724
Technology Center 2100

Decided: July 15, 2008

Before JOSEPH L. DIXON, JEAN R. HOMERE, and
CARLOYN D. THOMAS, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1 through 9. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

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[1] Filed Jun. 18, 2001. The real party in interest is Hewlett Packard Development, Co., LP.

The Invention

Appellants invented a process for automatically installing a software package on a remote client computer. (Spec. 1.) As depicted in Figure 1, an IT administrator from a console (1) instructs a server (2) having stored thereon a plurality of shared resources including software installation packages to associate an executable file at the server with the remote client (3, 4). (Spec. 6, 8.) As shown in Figure 2, upon the IT administrator dragging the software package icon, and dropping it into the client computer icon, the executable file of the software package becomes available as a local low level service on the operating system of the client computer. This causes a local setup procedure to be automatically launched in accordance with the contents of a description file for the software package contained in the server. (*Id.* 8-9.)

Claim 1 further illustrates the invention. It reads as follows:

1. Process for performing a remote setup procedure of a software application on a remote client which operates under an operating system which does not support a remote installation facility, comprising:

associating an executable file from a shared resource on a network with the remote client at the direction of an administrator console on the network, the executable file being adapted for controlling a local setup procedure under the form of a low level service which is available in the operating system of the client for local background tasks and routines and further being associated with a description contained within a description file present on the shared resource; and

starting said executable file so that it becomes available to said remote client as a local low level service and permits the automatic launching of a local setup procedure in accordance with the contents of said description file.

The Examiner relies upon the following prior art:

Kung	US 5,742,286	Apr. 21, 1998
Dickey	US 5,881,236	Mar. 09, 1999
Delo	US 6,418,554 B1	Jul. 09, 2002 (filed Sep. 21, 1998)

Applicant's Admitted Prior Art (APA).

The Examiner rejects the claims on appeal as follows:

A. Claims 1 through 4, 8, and 9 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Delo.

B. Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Delo and Kung.

C. Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Delo, Kung, and Dickey.

D. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Delo and Applicant's Admitted Prior Art (APA).

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Delo

1. Delo discloses a computer mechanism for automatically installing software packages from a network server to a remote client computer. (Abstract, col. 5, ll. 48-52.)

2. As shown in Figure 4, the network server (49) includes a managed software installer (API) (84a) that, upon receiving instructions from an administrator, generates an advertised script (82) containing various files pertaining to a particular software package that will be installed on a client computer (20). (Col. 7, l. 61- col. 8, l. 32.)

3. Upon receiving the generated advertised script (82), the client computer (20) uses a logon code (86) to call a local managed software installer mechanism (84b) to process the received script, thereby making it available to the user. Particularly, logon code (86) calls the managed software installer mechanism (84b) to process an advertised script. This results in a collection of advertisement information (88) including shortcuts, which the user activates by double clicking thereupon to launch or install the advertised software. (Col. 8, ll. 41-64.)

4. Delo discloses that advertised applications appear at the client computer at each logon. They appear to be, but are not necessarily, installed on the client workstation. (Col. 7, ll. 8-13.)

5. Delo also discloses that a user at a client workstation may launch or install an advertised application by clicking on a corresponding shortcut. This will cause the installer to search for the application locally. If

the application is not installed on the client workstation, the installer looks to a centralized class store (70) to transparently install the software on the client workstation. (Col. 11, ll. 24-58.)

PRINCIPLES OF LAW

ANTICIPATION

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992). "Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) ("In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.") (Internal citations omitted).

ANALYSIS

35 U.S.C. § 102

Independent claim 1 recites in relevant part associating an executable file from a shared resource on a network with a remote client at the direction

of an administrator console, and starting the executable file on the remote client as a local low level service to automatically launch a local setup procedure according to the contents of a descriptor file. (Claims Appendix A-1.) Appellants argue that Delo does not teach the recited limitations. (App. Br. 4-6.) Particularly, Appellants argue that Delo teaches a low level service installer that locally resides on each client workstation to install an advertised software package when activated by the user of such computer. However, Appellants allege that Delo does not teach a low-level service installer residing on a server to locally install the software on a client computer through local low level service installer, as recited in the claimed invention. (*Id.* 4.) Further, Appellants allege that Delo's advertised software is only installed upon user's activation, whereas the claimed invention requires that the software be launched automatically. (*Id.* 5.)

The Examiner, in response, finds that Delo's disclosure of automatically installing an advertised software package from a server to a client computer teaches the claimed invention. (Ans. 8-11.)

Thus, the pivotal issue before us is whether one of ordinary skill in the art would find that Delo's automatic software installation mechanism teaches using a centralized low level service in conjunction with a local low level service to automatically launch a software package on a client computer. We answer this inquiry in the affirmative.

As detailed in the Findings of Facts section above, Delo discloses a low-level service installer (managed software installer) at a server for

generating, in response to an administrator's request, an advertised script to be downloaded unto a client computer. (FF. 2.) Further, Delo discloses another low-level service installer locally installed at the client computer to process the advertised software upon user activation to thereby make the software available to the user. (FF. 3-5.) One of ordinary skill in the art would readily recognize that Delo's software installation mechanism uses both a centralized low-level service installer and a local low-level service installer to install the shared software on the client workstation. We do not agree with Appellants that the low level service installer resides only in Delo's client computer, and not on a shared resource. The ordinarily skilled artisan would duly appreciate that the low level service installer residing on the server computer is very instrumental in getting the advertised software to the client computer. As shown above, without the low-level service installer on the server, the advertised software would not be generated at all. Further, as correctly noted by the Examiner, the claim language merely requires that an executable file from a shared resource be adapted to control a local setup procedure under the form of a low-level service on the client computer. Therefore, the ordinarily skilled artisan would appreciate that Delo's centralized low level service installer generates an executable script on a server (shared resource) to instruct the local low level service installer, at logon, to process the advertised script.

Additionally, as detailed in the Findings of Fact section above, Delo explicitly discloses that the advertised software is automatically installed on

the client computer. (FF. 1.) Particularly, Delo teaches a logon code that calls the local low-level service installer to process the advertised software. (FF. 3.) The ordinarily skilled artisan would readily recognize that Delo's calling of the low level service installer teaches starting the executable file to make it available to the client computer as a local low level service. Appellants argue that the user's double clicking on the advertised software icon negates the automatic installation of the software on Delo's client computer. (App. Br. 4-5.) This argument is not persuasive. The claim merely requires starting an executable file on the client computer as a local low level service to permit the automatic launching of the local setup procedure. We note that the recited claim language does not preclude a user-initiated starting of the executable file. The claim language only requires that the launching of the local set procedure be automatic. As set forth in the Finding of Facts section, once the user double clicks on the advertised software, the logon code calls the low level service to fully execute the software. The ordinarily skilled artisan would consequently appreciate that Delo's user-initiated starting of the advertised program results in the automatic execution of the underlying local setup procedure in accordance with the contents of the description file therefor. It follows that Appellants have failed to show that the Examiner erred in finding that Delo anticipates independent claim 1.

Appellants do not provide separate arguments with respect to the rejection of claims 1 through 4, 8, and 9. Therefore, we select claim 1 as

being representative of the grouping of claims. Consequently, claims 2 through 4, 8 and 9 fall together with representative claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

35 U.S.C. § 103

Appellants argue that neither Kung, nor Dickey, nor APA cures the above argued deficiencies of Delo. Therefore, the combination of Delo with any of the cited references does not render dependent claims 5 through 7 unpatentable. (App. Br. 7-8.) As detailed in our discussion of independent claim 1 above, we find no such deficiencies in Delo for the cited references to cure. It therefore follows that Appellants have failed to show that the Examiner erred in concluding that the combination of Delo with the cited references renders claims 5 through 7 unpatentable.

CONCLUSIONS OF LAW

(1) Appellants have not shown that the Examiner erred in finding that Delo anticipates claims 1 through 4, 8, and 9 under 35 U.S.C. § 102(e).

(2) Appellants have not shown that the Examiner erred in concluding that the combination of Delo and Kung renders claim 5 unpatentable under 35 U.S.C. § 103(a).

(3) Appellants have not shown that the Examiner erred in concluding that the combination of Delo, Kung, and Dickey renders claim 6 unpatentable under 35 U.S.C. § 103(a).

(4) Appellants have not shown that the Examiner erred in concluding that the combination of Delo and APA renders claim 7 unpatentable under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's rejections of claims 1 through 9.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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